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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.            | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------------|------------------|
| 09/750,936   | 12/29/2000  | Leona G. Fleissman   | CR-25U-US                      | 9024             |
| 7590   | 07/15/2004  |                      |                                |                  |
| RUPA SEN<br>AVON PRODUCTS, INC.<br>AVON PLACE<br>SUFFERN, NY 10901 |             |                      | EXAMINER<br>HOWARD, SHARON LEE |                  |
|  |             |                      | ART UNIT                       | PAPER NUMBER     |
|  |             |                      | 1615                           |                  |

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/750,936

**Applicant(s)**

FLEISSMAN ET AL.

**Examiner**

Sharon L. Howard

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/30/04, 4/28/04.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17, 41-67 and 35-39 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-17, 35-39 and 41-67 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

***The examiner acknowledges receipt of the petition for extension of time filed on 4/30/04, and remarks of 4/28/04. Claims 1,35,38,41,53-58 are currently amended. Claims 68-70 are newly added.***

***Claims 1-17,35-39,41-67 are pending in this application.***

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17,35-39,41-67 and newly added claims 68-70 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Royce (U.S. Patent No. 5,688,839) in view of Tsipursky et al. (U.S. Patent No. 5,721,306).

Royce teaches a composite product having a "marbleized appearance" (i.e. a distinctive and vivid separation of colors). Royce teaches that each type of background resin may be different from other types of background resin (col.2, lines 51-67, col.3, lines 2-5). Royce teaches that the product has two types of colored resin particles wherein each type of particles is of a different color and is irradiated (col.1, lines 6-10, col.2, lines 21-63), dispersing agents such as waxes (col.3, lines 56-59), and the purpose of the agents are known for aiding in evenly dispersing the colorants throughout the resin (col.3, lines 63-65). Royce teaches that other additives are known in the art (col.3, lines 60-61)

Royce teaches that the product is prepared by the injection molding process (col.5, lines 14-41), and that the background component and accent component are uniformly mixed and extruded. Royce further teaches that the colorants of the background component are dispersed throughout the colorless natural resin creating the desired background color (col.5, lines 14-36, see Examples 1-3 at cols. 5-7).

Although Royce teaches that other additives are known in the art, Royce does not particularly teach a smectite clay dispersed in a solvent.

However, Tsipursky teaches viscous solvent compositions which are known to be useful for carrying pigments and cosmetics (col.1, lines 16-25). Tsipursky teaches a smectite clay (col.1, lines 60-66, col.3, lines 56-64, col.9, lines 31-67, col.10, lines 1-49, col.15, lines 23-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Tsipursky in view of Royce. One having ordinary skill in the art would have been motivated to include smectite clay dissolved in a solvent, for the purpose of obtaining a composite product which has a "marbleized appearance" and smectite clay dispersed in a solvent therein.

### ***Response to Arguments***

Applicant's arguments filed 4/28/04 have been fully considered but they are not persuasive. Applicant argues that Applicants' process and the resulting segmented compositions are quite different than the Royce product process. The Tsipursky reference discloses smectite clay dispersions, but does not teach the products of the present invention. There is no assurance that the liquid polymeric composition of

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Tsipursky would be suitable for the processes mentioned in Royce. Moreover, there is no disclosure in Tsipursky that the thixotropic composition has the requisite properties of the second component of the present invention identified above.

In response to applicant's arguments, Royce teaches a segmented composition consisting of a composite product having a "marbleized" appearance (see col.2, lines 51-67, col.3, lines 2-5 and at col.1, lines 6-10, col.2, lines 21-63). Royce teaches waxes (see col.3, lines 56-59). Tsipursky is relied on for the teaching of solvent compositions comprising a smectite clay (see col.1, lines 16-25 and at lines 60-66, col.3, lines 56-64, col.9, lines 31-67).

The burden is shifted to applicant to show criticality in the particular melting temperatures, and it is the position of the examiner that it would be obvious to add a clay in a cosmetic formulation and the results would be well-known to the art.

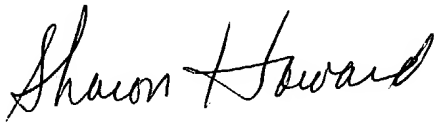
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (703) 308-4359. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-3121.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.



Sharon Howard  
July 1, 2004



THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600